

IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE  
August 27, 2007 Session

**RONALD L. STIEF v. MADARIS EXTERIORS, INC. ET AL.**

**Appeal from the Chancery Court for Van Buren County  
No. 1213 Larry Bart Stanley, Jr., Chancellor**

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**No. M2006-01703-WC-R3-WC - Mailed - January 11, 2008  
Filed - April 2, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. This is an action for workers' compensation benefits brought by the Appellant, Ronald L. Stief. The trial court granted summary judgment to Appellees, Madaris Exteriors, Inc. and Builders Mutual Insurance Company, on the ground Mr. Stief was an independent contractor, and dismissed the case. Mr. Stief has appealed. We find that the trial court erred in granting summary judgment and, therefore, reverse the judgment of the trial court and remand this matter for further proceedings.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2006) Appeal as of Right; Judgment of the Trial  
Court Reversed, Case Remanded**

DONALD P. HARRIS, SR. J., delivered the opinion of the court, in which CORNELIA A. CLARK, J., AND ALLEN W. WALLACE, SR. J., joined.

Keith S. Smartt, McMinnville, Tennessee, for the Appellant, Ronald L. Stief.

John T. Rice, Chattanooga, Tennessee, for the Appellees, Madaris Exteriors, Inc. and Builders Mutual Insurance Company.

**OPINION**

**FACTUAL AND PROCEDURAL BACKGROUND**

Ronald L. Stief was 53 years old at the time he suffered the injuries for which he brought this action. He has spent the majority of his working life installing doors and windows. He began working for Madaris Exteriors, Inc. (Madaris) in 2003. He alleges that he was installing a patio

door for Madaris during “the Cope job” when he fell off of a ladder in July 2004 and suffered significant injuries. Mr. Stief contends that he is entitled to workers’ compensation benefits as a result of his fall. Madaris denies that Mr. Stief is entitled to benefits on the basis that he was working as an independent contractor.

Following discovery, Madaris filed a motion for summary judgment alleging that Mr. Stief “was an independent contractor . . . and therefore was not subject to coverage under worker’s compensation . . . and therefore is not subject to any benefits.” Mr. Stief filed a response which opposed the motion, supported by his own affidavit. In accordance with Rule 56.03 of the Tennessee Rules of Civil Procedure, each side submitted a statement of undisputed facts in support of its position. Each side filed a response to the other’s statement. The depositions of Mr. Stief and Melvin Madaris, President of Madaris, were also submitted in support of the motion.

Distilling all of these materials, the following facts are undisputed: (1) Before Mr. Stief began working for Madaris in 2003, he completed an employment application; (2) Madaris did not deduct taxes from Mr. Stief’s wages, and reported his earnings to the IRS by means of a 1099; (3) Mr. Stief paid the self-employment tax in 2003; (4) Mr. Stief signed Tennessee Department of Labor and Workforce Development Form I-18 in August 2003 stating that Mr. Stief is a sub-contractor/ a sole proprietor and did not elect to be covered under Madaris’s workers’ compensation insurance; (5) Mr. Stief was paid on a price-per-job basis, but the price varied according to the amount of labor involved; (6) Mr. Stief did not receive income from any other source after he began working for Madaris; (7) Melvin Madaris often went on job sites and directed Mr. Stief how to perform particular jobs; (8) Mr. Madaris tried to check on each job every day; (9) Melvin Madaris’s grandson worked with Mr. Stief at the job site where the injury occurred; (10) Madaris generally reserved the use of company vehicles to its employees; and (11) Madaris provided the materials for the jobs Mr. Stief performed.

The following facts are disputed in whole or in part: (1) Whether Madaris provided Mr. Stief with a company vehicle; (2) whether Madaris provided Mr. Stief with specialized tools; and (3) whether Mr. Stief was paid by the hour for some work.

The trial court granted Madaris’s motion for summary judgment finding as follows:

The facts in this case indicate that [Mr. Stief] was an independent contractor, despite the fact that he used one of [Madaris’s] company vehicles and during the time in question generally only worked for [Madaris]. This Court finds that there are no issues of material fact in dispute as to whether [Mr. Stief] was an independent contractor or an employee of [Madaris].

Mr. Stief appealed from the trial court’s grant of summary judgment to Madaris. We reverse the trial court’s judgment and remand this matter for further proceedings.

## STANDARD OF REVIEW

We review a trial court's grant of summary judgment de novo and accord no presumption of correctness to the trial court's determination. Godfrey v. Ruiz, 90 S.W.3d 692, 695 (Tenn. 2002). Summary judgment is appropriate only when the moving party has shown that there is no genuine issue of material fact and that the party is entitled to summary judgment as a matter of law. Id. In addition, "[w]hen considering a summary judgment motion, courts must view the evidence in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party's favor." Id. Further, as this Court has previously observed, "summary judgment is inappropriate where there is a dispute as to the facts, or where there is uncertainty as to whether there may be such a dispute. Hence, summary judgment is almost never an option in a contested workers' compensation action." Berry v. Consolidated Sys., Inc., 804 S.W.2d 445, 446 (Tenn. 1991) (citation omitted).

## ANALYSIS

Tennessee's Workers' Compensation Law provides for the payment of compensation to employees "for personal injury or death by accident arising out of and in the course of employment." Tenn. Code Ann. § 50-6-103(a) (2005). It is, therefore, necessary to determine whether a person injured during the course of his work is an "employee" entitled to recover under the Workers' Compensation Law. See Murray v. Goodyear Tire & Rubber Co., 46 S.W.3d 171, 175 (Tenn. 2001) ("Coverage under the [Tennessee Workers' Compensation] Act depends primarily on the existence of an employer-employee relationship.").

"[O]nce it is established that an employment relationship exists, the burden is on the employer to prove the worker was an independent contractor rather than an employee." Galloway v. Memphis Drum Serv., 822 S.W.2d 584, 586 (Tenn. 1991). Moreover, "this Court will resolve doubts in favor of a finding that a worker is an employee rather than an independent contractor." Id.

Tennessee Code Annotated section 50-6-102(11) provides that, in order to determine whether an individual is an "employee," a "subcontractor," or an "independent contractor," the following factors "shall" be considered:

- (A) The right to control the conduct of the work;
- (B) The right of termination;
- (C) The method of payment;
- (D) The freedom to select and hire helpers;
- (E) The furnishings of tools and equipment;
- (F) Self scheduling of working hours; and
- (G) The freedom to offer services to other entities[.]

Tenn. Code Ann. § 50-6-102(11) (2005). “[N]o single factor is determinative.” Galloway, 822 S.W.2d at 586. However, “this Court has repeatedly emphasized the importance of the right to control, the relevant inquiry being whether the right existed, not whether it was exercised.” Id.

In this case, Madaris did not dispute Mr. Stief’s assertion that “Mr. Madaris went on job sites and directed [Mr. Stief] how to do particular jobs.” This undisputed statement weighs in favor of Mr. Stief’s status as an employee. Similarly, the fact Mr. Stief received no income from any other source after he went to work for Madaris supports his contention that he was Madaris’s employee. Also, nothing in the record suggests that Madaris’s right to terminate Mr. Stief was in any way restricted, which is another factor weighing in favor of Mr. Stief’s status as an employee. See Galloway, 822 S.W.2d at 587. Madaris emphasizes the fact that it did not withhold social security or federal income taxes from Mr. Stief’s paychecks. This Court has previously held, however, that this fact “is not in itself controlling.” Carver v. Sparta Elec. Sys., 690 S.W.2d 218, 221 (Tenn. 1985).

The trial court did not address specifically any of these undisputed facts in its order granting summary judgment to Madaris. More importantly, the trial court failed to recognize the significance of the parties’ dispute over several material facts: the provision of a company vehicle to Mr. Stief, generally reserved for employees; the provision of company tools to Mr. Stief; and the method of calculating Mr. Stief’s pay. In light of the trial court’s duty when considering the motion for summary judgment to view all evidence in Mr. Stief’s favor and to deny the motion when there is a dispute over material facts, we hold that the trial court erred in granting Madaris’s motion for summary judgment.

Although not specifically relied on by the trial court, the record includes a document titled “Election of Non-Coverage by Sub-Contractor” signed by Mr. Stief on his own behalf and by Melvin Madaris on behalf of Madaris. This document, commonly referred to as Form I-18, provides that Mr. Stief is a “sole proprietor . . . acting in the capacity of sub-contractor” and that Mr. Stief declines coverage “under [Madaris’s] workers’ compensation coverage.” While this document certainly weighs in favor of Madaris’s contention that Mr. Stief is an independent contractor, we decline to hold that this single document is in and of itself determinative of the issue before us. As this Court has previously stated:

It is the duty of the court to determine if a worker is an employee or independent contractor, and the employer cannot use a contract to take that responsibility from the court. The Workers’ Compensation Act similarly prohibits the use by an employer of any “contract or agreement, written or implied, or rule, regulation or other device” to evade its workers’ compensation obligations. Tenn. Code Ann. § 50-6-114(a). The cited code section clearly establishes the public policy against the making of any agreement which would reduce an employer’s liability for permanent disability benefits under the Act.

The Form I-18 is not a contract defining the relationship between the parties, but rather it is a notice that an independent contractor has not elected to be covered by workers' compensation. The purpose of the form cannot be to declare the status of the worker as an independent contractor, as one must already be an independent contractor in order to be eligible to use it. Therefore, [the employer] cannot meet his burden of [proving that the plaintiff is an independent contractor] by relying on the Form I-18 signed by [the plaintiff]. [The employer] must prove that the characteristics of the employment relationship were in fact that of employer and independent contractor at the time of the accident. To hold otherwise would frustrate the purpose of the workers' compensation system as employers could simply require all their workers to sign a Form I-18 and subsequently claim they were independent contractors, regardless of the actual nature of their relationship to their workers.

Warner v. Potts, No. M2003-02494-SC-WCM-CV, 2005 WL 995236, at \*4 (Tenn. Workers' Comp. Panel, April 29, 2005) (citations omitted). See also Boruff v. CNA Ins. Co., 795 S.W.2d 125, 126 (Tenn. 1990) (rejecting as determinative in and of itself employment contract that defined worker as independent contractor and finding worker to be employee following "a detailed analysis of the contract and the practical effect of its requirements").

We find the documents submitted to the trial court in support of and in response to Madaris's motion for summary judgment reveal that there remain disputes about material facts relevant to the determination of Mr. Stief's status at the time he was injured on "the Cope job." Accordingly, we conclude the trial court erred in granting summary judgment to Madaris.

#### CONCLUSION

The judgment of the trial court is reversed and this matter is remanded to the trial court for further proceedings consistent with this opinion. The costs of this appeal are assessed to the Appellees, Madaris Exteriors, Inc. and Builders Mutual Insurance Company, and their sureties.

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DONALD P. HARRIS, SENIOR JUDGE

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**No. M2006-01703-SC-WCM-WC - Filed - April 2, 2008**

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**ORDER**

This case is before the Court upon the motion for review filed by Madaris Exteriors, Inc. et al. pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Madaris Exteriors, Inc. and Builders Mutual Insurance Company, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

CORNELIA A. CLARK, J., not participating